
In Re the Arbitration Between:

BMS File No. 13-PN-0286

Freeborn County, Minnesota,

Employer,

and

**INTEREST ARBITRATION
OPINION AND AWARD**

Minnesota Public Employees Association,
Freeborn County Deputies,

Union.

Pursuant to **Minn. Stat. Section 179.16, Subd. 2**, the Commissioner of Minnesota Bureau of Mediation Services on September 11, 2013 certified the following issues at impasse in the above dispute:

- Issue One: Duration – Length of Contract, 1 or 2 Years? – Article 26
- Issue Two: Wages 2013 – Amount of General Increase, If Any? – Appendix B
- Issue Three: Wages 2014 -- Amount of General Increase, If Any? – Appendix B
- Issue Four: Compensatory Time – Maximum Accumulation? Article 12
- Issue Five: Uniform Allowance – Amount of Increase, If Any? – Article 14
- Issue Six: Shift Differential – Amount of Increase, If Any? -- Article 22

On November 5, 2013 the parties notified James A. Lundberg that he was appointed to serve as the neutral arbitrator in the above captioned matter and requested hearing dates.

A hearing was conducted on January 14, 2014 at the Freeborn County Government Center.

The duration of the contract shall be two (2) years pursuant to the prehearing agreement of the parties over Issue Number One.

Issue Number Four "Compensatory Time Off" was withdrawn by prehearing agreement.

Briefs were submitted on January 28, 2014 by e-mail transmission. Service by U.S. mail was not required by agreement of the parties and the record was closed.

APPEARANCES:

FOR THE EMPLOYER

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ISSUES TWO AND THREE:

Issue Two: Wages 2013 – Amount of General Increase, If Any? – Appendix B

Issue Three: Wages 2014 -- Amount of General Increase, If Any? – Appendix B

POSITION OF THE COUNTY:

For 2013 the County proposes a general wage increase of one and three quarters percent (1.75%).

For 2014 the County proposes a general wage increase of two percent (2.0%).

Since the adoption of the **Minnesota Pay Equity Act, Minn. Stat. Sec. 471.991-471.999**, the principle but not the exclusive factor relied upon by most Minnesota interest arbitrators in deciding wage issues, benefits and other terms and conditions of employment has been internal consistency. In this case, the Employer's wage proposal is in line with all other wage settlements between the

County and bargaining units. Every other bargaining unit, including the Police Sergeants represented by MNPEA have settled for a general wage increase of 1.75% in 2013 and a general wage increase of 2.0% in 2014. There is no reason why the general wage increase to be paid to Patrol Deputies should deviate from the internally consistent pattern of wage increases. The wage pattern is well established and Freeborn County Patrol Deputies are currently paid higher wages than predicted according to the most recent job study.

External comparisons of wages within Minnesota Economic Development Region 10 favor the Employer's wage proposal. The County proposal would keep Freeborn County Patrol Deputies at or above the external market averages in 2013. In fact, starting wages would be \$29.00 per year above average, if the 2013 proposal made by the County is adopted. The Union's wage comparisons also demonstrate that the Employer's position is slightly above the average within the comparison group. The Employer's comparisons did not include Fillmore County, because wages had not been reported to the Employer and the Union's comparisons did not include Rice County because they had not been reported to the Union. Looking at Top Patrol rates, the County's proposal using either the Employer's comparisons or the Union's comparisons, Freeborn County's proposed Patrol Deputy wages are above the market average. The County wage proposal maintains the 2012 ranking of Freeborn County Patrol Deputy wages within Minnesota Economic Development Region 10.

There is little data available for comparison within Minnesota Development Region 10 for 2014. Approximately one half of the counties in Minnesota Development Region 10 have settled. Compared to currently reported wage

settlements, the Employer's proposal keeps wages above the average wage for the counties that have settled.

Of four Arbitration law enforcement contract arbitration awards reported in the State of Minnesota for 2014, three arbitrators awarded general wage increases of 2.0%. The general wage increase obtained by the Forest Lake Police Patrol Officers for 2014 was a 1.5% general wage increase.

The County acknowledges that it has the current ability to pay the Union's proposed wage increase. However, the concept of ability to pay goes beyond the question of whether the wage proposal would bankrupt the Employer. No arbitration awards were submitted to support the Union's position that a proposed wage increase should be paid simply because the Employer has some financial reserves.

Economic recovery of local governments normally lags behind the private sector. Property values upon which property taxes, the County's main source of revenue, are assessed have not recovered to pre-recession levels. It would be unreasonable to increase County employee wages at a rate that cannot be sustained by the slowly recovering local economy.

The County proposal is consistent with recent increases in the Consumer Price Index, which moved between 2.0% and 1.2% per month in the first eleven months of 2013. The County's proposed wage increase keeps pace with recent cost of living increases.

POSITION OF THE UNION:

For 2013 the Union proposes a general wage increase of two percent (2.0%).

For 2013 the Union proposes a general wage increase of two and one half percent (2.5%).

The Union proposes a general wage increase that is slightly higher than the County's wage proposal in order to maintain the buying power of bargaining unit members. As the overall economy improves and the cost of living increases, wages need to keep pace. The Consumer Price Index from the first half of 2012 through the first half of 2013, the most recently available data, rose 2.1%, higher than the proposal made by the Employer for either 2013 or 2014. The Union contends that the Employer's proposed general wage increase will move bargaining unit wages from the middle toward the bottom of the Minnesota Economic Development Region 10 comparison group.

While wage settlements by other bargaining units within the County have all been at 1.75%, the pattern does not necessarily reflect "fair" treatment. Relying exclusively upon internal wage settlement patterns gives the County an opportunity to "game the system". First, they negotiate with a non-essential bargaining unit, which is unlikely to strike. Once the unit settles for "the best they can get", the County engages the next weakest bargaining unit arguing that the initial settlement was acceptable to the bargaining unit that made the initial settlement. Thus, it should be acceptable to bargaining unit number two. By the time negotiations reach essential employee bargaining units, the pattern has been set and the argument in

arbitration is based upon the rate of increase, without regard to whether the essential employees are being paid a "fair wage." In this instance, the Union believes that an appropriate wage is somewhat higher than the wages being proposed by the Employer.

It is the Union's position that the internal wage settlement pattern, which includes the MNPEA Sergeants, does not accurately reflect how the Employer's wage proposal became acceptable to the MNPEA Sergeant bargaining unit. In fact, as the direct result of a job study the MNPEA Sergeants unit was raised one grade on the pay scale and the 1.75% and 2.00% wage increases were made on the new base pay. Hence, the Sergeants actually received a much greater increase than 1.75% and 2.00%. The internal settlement pattern does not take into consideration the additional wage increase obtained by the Sergeant's bargaining unit because of the job study.

The Union argues that Economic Development Region 10 is the appropriate external comparison group, with a special emphasis on Mower County. The two counties are nearly the same size in population and total area. Furthermore, the county seats, Austin of Mower County and Albert Lea of Freeborn County, are very similar. In performing an external comparison, Mower County should be given extra weight.

The demands made on deputies in Freeborn County and Mower County are identical but starting wages for Freeborn County Deputies are currently \$2.06 per hour less than starting wages for Mower County Deputies and top patrol wages for Mower County Deputies are \$1.16 per hour higher than top patrol wages in

Freeborn County. While the difference between the starting wage proposal of the Union and management is only \$.05 per hour in 2013 and \$.10 in 2014 or about \$300.00 over the length of the contract, the County should be paying its' patrol officers wages similar to the wages of patrol officers working in a county that is nearly identical to Freeborn County by any relevant measure. The Union's proposal would simply bring the wages of Freeborn County Deputies a little bit closer to the wages being paid for the same work that is being done by deputies in Mower County.

Freeborn County has the ability to pay MNPEA's proposals. There are only 12 Deputies working for the County and the added cost to the County for 2013 will be \$1,546 and in 2014 the added cost will be \$3,132. County revenues in 2012 exceeded expenses by \$5.1 million. The added cost of the Union's proposal is insignificant in light of the excellent economic health of the County.

OPINION:

The evidence in this case supports the Employer's proposed wage increase.

There is a uniform pattern of wage increases between Freeborn County and bargaining unit of 1.75% in 2013. In 2014 the Freeborn County made a 2.0% general wage increase settlement with all other bargaining units. The Licensed Deputy Unit is male dominated and currently being paid above predicted pay based upon the County's pay equity report. The internal wage comparisons and the most recent job study do not support a wage increase above the County proposal.

External wage comparisons for 2013 reflect that Freeborn County Deputies will be paid slightly above the average for wages within Minnesota Economic

Development Region 10 and the relative ranking of Freeborn County Deputy wages within Region 10 will remain the same. Freeborn County and Mower County are both contiguous and very similar in population and area. The wage proposal made by the Employer will maintain the same relative position between Freeborn County and Mower County for 2013.

While little wage settlement data is available for 2014, the available data does not support an annual wage increase of greater than 2.0%. The information currently available is consistent with the Employer's wage proposal.

The period of time reflected in Consumer Price Index data governs whether the Employer's or Union's 2013 wage proposal is supported. Consumer Price Index data submitted by the Union from the last half of 2012 through the first half of 2013 reflects an increase of slightly more than 2.0% but the data submitted by the Employer, the first eleven months of 2013, reflects a monthly increase between 2.0% and 1.2%, which supports the County's position.

The Employer's financial condition is currently sound and it has the ability to pay either wage proposal.

A general wage increase of 1.75% in 2013 and a general wage increase of 2.0% in 2014 is supported by the internal wage comparisons and external wage data. Neither the Consumer Price Index data nor arguments regarding the Employer's ability to pay provide a compelling basis for awarding a greater general wage increase to the Licensed Deputies than all other Freeborn County Employees. Hence, the Employer's proposed general wage increases for 2013 and 2014 should be awarded.

AWARD:

A general wage increase of 1.75% is hereby awarded for 2013.

A general wage increase of 2.0% is hereby awarded for 2014.

Wage increases shall be retroactive to the first pay period that includes January 1 of each year.

ISSUE FIVE: Uniform Allowance – Amount of Increase, If Any? – Article 14

The parties agreed that the allowance shall be paid on the second Friday in May and second Friday in November in 2013 and 2014.

UNION'S POSITION:

The Union proposes an increase in the uniform allowance from \$750.00 to \$800.00.

The Union presented current costs for uniform items. Taking into consideration reasonable wear and damage, the Union estimates that the uniform items normally consumed in a year are: one (1) pair of boots, three (3) pairs of pants, four (4) long sleeved shirts, four (4) short sleeved shirts and (.5)Winter Jacket. The median cost for the items identified by the Union is currently \$832.16. Using the median cost of uniform items, the current uniform allowance is less than a Deputy's actual expense for uniforms in a year. The Union argues that the annual uniform allowance should cover the basic cost of the Deputy's uniform.

COUNTY POSITION:

The County proposes no change in the uniform allowance for 2013 and 2014.

The County argues that it would be internally inconsistent for the County to provide a greater uniform allowance for Patrol Deputies than the \$750.00 allowance it makes to the Sergeant's bargaining unit. There is a \$100.00 differential between Corrections Officers and Corrections Sergeants and sworn Deputies but the demands of the positions are different.

The Freeborn County uniform allowance is comparable to other uniform allowances within Minnesota Economic Development Region 10. Four counties: Dodge, Steele, Wabasha and Faribault provide the same \$750.00 allowance. Houston County pays \$800.00 as uniform allowance. Rice County pays a \$100.00 per month differential. Olmsted and Mower Counties provide uniforms and do not have a uniform allowance. Fillmore County provides only \$580.00 as a uniform allowance.

The County argues that the Union failed to produce evidence of a need to change the current uniform allowance. Rather than providing actual costs incurred by bargaining unit members for uniform items, the Union relied exclusively upon median prices for uniform items and estimated uniform needs. Moreover, adoption of a uniform reimbursement program would save employees roughly \$45.00 per year in taxes, assuming a 6% tax on \$750.00 in expenditures, bringing the reimbursement within five dollars of the proposed \$800.00 allowance.

OPINION:

The internal comparisons made by the County demonstrate that the Deputies receive the same uniform allowance benefit as Sheriff Sergeants but a greater benefit than the Corrections officers and Corrections Sergeants. Internally there is

no consistent pattern but the Patrol Deputies are paid the highest Uniform allowance provided by Freeborn County.

The comparisons made within Minnesota Economic Development Region 10 place the Freeborn County Patrol Deputy uniform allowance at the same level as four other counties and fifty dollars less than Houston County. A direct comparison with Olmsted and Mower County cannot be made. The arbitrator interprets the \$100.00 per month differential paid by Rice County to be a \$1,200.00 benefit. Finally, the Fillmore County benefit of \$580.00 is far below the typical benefit paid within Region 10. The \$750.00 benefit paid by Freeborn County is the same as the benefit paid to the largest number of Deputy units within Region 10. External comparisons do not reflect a trend within the comparison group toward payment of a greater uniform allowance than \$750.00.

The Union's proposed change is to some degree supported by the current cost of uniform items that a Deputy is likely to incur in a year. However, the County's argument that no specific evidence of actual costs incurred by Freeborn County Deputies was submitted is well taken. The burden of establishing a need to change the existing benefit level is on the Union. In this case the estimated costs of uniform items without additional more specific factual support is insufficient to establish a need to change the contract term and the internal and external comparisons do not demonstrate internal inequity or an external trend toward payment of a greater benefit.

AWARD:

For 2013 and 2014 the uniform allowance shall remain at \$750.00 and the uniform allowance shall be paid on the second Friday in May and second Friday in November.

ISSUE SIX: Shift Differential – Amount of Increase, If Any: -- Article 22

UNION POSITION:

The Union proposes an increase in the shift differential from sixty cents (\$.60) per hour to eighty-five cents (\$.85) per hour in 2013 and 2014.

The average shift differential paid in Minnesota Economic Development Region 10 is \$.64 per hour. In Olmsted County the differential paid is \$1.10 per hour. Fillmore County pays \$.75 per hour differential and the Mower County shift differential is \$.70 per hour. Because the shift differential is below the comparable market, the Union asks that the differential be increased.

EMPLOYER POSITION:

The County proposes no increase in the shift differential for 2013 and 2014.

The existing shift differential paid to Freeborn County Deputies is identical to the shift differential paid to the Sergeants bargaining unit, the Corrections Officer unit and the Corrections Sergeants unit. All of the Freeborn County law enforcement bargaining units are paid an identical shift differential and there is no reason to change what is an internally consistent benefit.

Three counties in the Minnesota Economic Development Region 10 pay no shift differential. The Olmsted County differential is extraordinarily high at \$1.10,

yet the overall average differential paid in the seven counties that pay a shift differential is \$.64 per hour. If the three counties that pay no differential are added to the calculation the average shift differential falls to \$.45 per hour.

The internal shift differential comparisons do not support the proposed increase and the current shift differential is within four cents of the average shift differential among Region 10 counties that pay a differential.

OPINION:

The comparison of shift differentials paid to other law enforcement and corrections bargaining units in Freeborn County weigh heavily in this case. The disruptions and inconveniences to the lives of people working a shift other than day shift are the same for all employees. No argument was submitted to explain why Patrol Deputies should be paid a wage differential that is more than 40% greater than other people on similar or the same shift working for the same Employer.

While the average wage differential paid in Region 10 is slightly more than the wage differential paid by Freeborn County, the four cent (\$.04) per hour deviation does not support a \$.25 increase in the shift differential to be paid Freeborn County Patrol Deputies.

AWARD:

The shift differential for 2013 and 2014 shall be sixty cents (\$.60) per hour.

Dated: February 24, 2014


James A. Lundberg, Arbitrator